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Mark E. MacKenzie
President

CC 96-128

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July 13, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. Greg Lipscomb
Enforcement Division
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

RE: Comment on Remand Issues in Payphone Proceeding

Dear Sir or Madam:

Citicorp Services Inc. is submitting the attached response to the Federal Communications Commission in response to the Commission's request for comment on certain issues related to payphone surcharges.

For further discussion of the issues raised in this letter, please contact my colleague, Brian Kibble-Smith, at (773) 380-5270.

Sincerely,

Mark MacKenzie

Mark MacKenzie
President

Cc: Brian Kibble-Smith,
Vice President, Government Relations

Attachment

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUL 13 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
Implementation of Pay Telephone	)	
Reclassification and Compensation	)	**CC Docket No. 96-128**
Provisions of the Telecommunications	)	
Act of 1996	)	

COMMENTS OF CITICORP SERVICES INC. ON PAYPHONE FEES FOR COINLESS CALLS

Citicorp Services Inc. ("Citicorp") is submitting this statement to the Federal Communications Commission ("Commission") in response to the Commission's request for comment on certain issues related to payphone surcharges. These issues were raised by the decision of the United States Court of Appeals for the District of Columbia in *MCI Telecommunications Corporation, et al. V. FCC*, holding that the Commission did not adequately justify the derivation of a compensation rate for coinless payphone calls. The Commission seeks comment concerning the competitive market for these calls since the deregulation of payphones.

In addition, however, the Commission must be made aware of what we believe is an unintended consequence of the Telecommunications Act of 1996 ("Act"), which provides the ultimate basis for the current proceedings. This consequence is the unforeseen impact of the Act, as extended by regulation, into not-for-profit activities, government services, and, in particular, state government welfare, benefit and entitlement programs. This impact is explained in greater detail below. We believe that the Commission can and should remedy this through appropriate regulation.

BACKGROUND

Many entities rely on "toll-free" 800/888 telephone numbers to deliver their services and conduct operations. Not all of these entities, however, are commercial in nature. Countless non-commercial entities, such as not-for-profit organizations and local, state and federal agencies provide toll-free telephone access to their services. An inherent assumption is that payphones are frequently used for this access, especially where lower-income individuals are involved. For these entities are concerned with serious social matters, such as battered women or runaway children, payphones are often used out of necessity.

It is, however, the area of government welfare programs where our company has its most direct interest. The vast majority of state welfare programs are now supported by

Electronic Benefit Transfer ("EBT") systems. Over 40 states are currently served by, or are implementing EBT systems. Indeed, federal law mandates that all states use EBT to distribute Food Stamp Program benefits by the year 2002.

Simply said, EBT is the automation of the payment process for government programs such as the Food Stamp Program, Temporary Assistance for Needy Families ("TANF"), General Assistance, and many others. EBT uses debit cards and banking technology to replace paper-based delivery mechanisms such as Food Stamp Coupons and welfare checks. The families and individuals ("Recipients") that rely on these programs for support are, by definition, among the neediest people in the country. EBT systems provide lifeline benefit access to the Recipients.

In order to acquire EBT systems, states initiated competitive bidding through Requests for Proposals ("RFPs") responded to by private sector contractors, including Citicorp. After almost a decade of developmental projects, most states completed their RFP processes in the 1994-1996 time frame. State governments, in an effort to finance the significant one-time cost of the transition from paper to EBT, entered into long-term contracts with their selected EBT system contractors. These long-term contracts were necessary to allow the private contractors to recapture their initial capital investments over time.

EBT systems use basic debit card services to enable Recipients to access funds using Automated Teller Machines ("ATMs") and Point of Sale ("POS") devices at retailer counters. Unlike other commercial consumer accounts that by regulation include the provision of a monthly statement for account information, Recipients rely on their transaction receipts and toll-free "helplines" to determine their available benefit balances. Recipients generally do not have the same level of home phone service as the general population and therefore may rely on the use of payphones to call the toll-free helplines. Recipients also use these helplines to activate newly issued EBT cards, obtaining transaction histories and, most importantly, for deactivating cards that are lost or stolen to prevent the theft of their benefits.

The states in their acquisition of EBT services did not contemplate the imposition of a payphone surcharge for access to toll-free services. State EBT contracts compensate contractors on a fixed price basis. This price is intended to include, among other things, the cost of toll-free helpline service, but not the costs of payphone access. The introduction of a surcharge to access toll-free numbers through payphones almost universally has occurred after the EBT contracts had already been executed between the states and their contractors. This now represents a significant new category of cost to the EBT system on both sides of the contracts. One by-product of the payphone surcharge policy is a significant contractual dispute between governments and their EBT contractors where no dispute existed previously. Another potential by-product is the blocking of calls from Recipients, thereby affecting the neediest group of consumers.

The issue between states and private-sector EBT contractors is how, in the face of the Commission's current regulations, to continue Recipients' access to balance information and other lifeline services in a manner that protects contractors' reasonable economic expectations while supporting the goals of states' EBT programs. The obvious mechanism to resolve this matter is to restore the status quo and exempt EBT-related calls from the scope of the regulations; an action we assume to be within the Commission's power. We would endorse similar consideration for other non-commercial not-for-profit and governmental functions. The additional, unbudgeted expense of a surcharge for access to 800/888 services from payphones will most likely result in a reduction of socially beneficial services or, in the case of government programs, an increased expense to the taxpayer.

Regardless of the basic dispute on EBT contract interpretation that the payphone surcharge issue has caused, Citicorp agrees with the Appellate Court finding that the Commission's reasoning was not complete in setting the default rate for payphone calls. The Commission apparently did not consider a number of additional factors, such as the reduction of payphone owners' coin-handling expenses through toll-free calls. These factors are described below.

ADDITIONAL PRICING FACTORS

1. Impact of a Surcharge Where There is No Commercial Benefit: We believe that the Commission did not consider the fact, discussed above, that many of the entities who avail themselves of 800/888 services do not derive commercial benefit from the toll-free calls placed through payphones. While it may be arguable that a profit-motivated commercial entity derives an economic benefit from toll-free calls initiated at payphones, this analysis does not apply to non-commercial or governmental entities. Where payphone owners are facilitating the commercial objectives of third parties, the owners could reasonably expect some compensation for providing increased access to customers. These costs can then be passed along to the consumers of goods and services as part of the entities' overall pricing. However, for non-commercial and governmental entities, toll-free access is often necessary for them to carry out their purposes, but there is no available mechanism to easily offset the increased cost of access. As a fundamental proposition, we believe that any attempt to establish a default rate must consider the role of non-commercial entities in this market.

The assumption that all 800/888 owners wished to offer such access is flawed, as not every owner of an 800/888 number reaps the assumed economic benefit of providing service. There are a number of government and not-for-profit entities that provide consumer support services, such as State help lines for child welfare, ET help desk services, crime task force, etc., that do not have the financial resources o bear this additional cost. Indeed, these are suddenly affected even though their operating mandate (provide lifeline services) do not fit in any regard the oversimplified model which the FCC adopted as a core part of its foundation assumption in this regard.

2. Market Pricing Does Not Equal Cost: Cost of services is not, itself, an appropriate indicator for market price. Any price is based on supply and demand as well as other market-driven factors. While cost is a component of a price, the use of cost to

establish a default rate is arbitrary. Presumably, most companies avoid selling services or goods at or below cost, but cost is not predicted by market pricing and is usually well below that rate. Allowing payphone owners to charge in bulk to 800/888 line owners the rate that the payphone owners receive for individually placed calls therefore has no relationship to the costs that the payphone owners actually incur. This will have the result of enriching payphone owners in a manner totally inappropriate to the purposes and objectives of the Commission.

3. Any Set Rate Should Reflect Other Cost Savings: Compared to coin-based payphone calls, coinless (i.e., 800/888) usage implies a different, reduced level of equipment service and support. Any default rate for coinless service should reflect those differences. One of the highest costs associated with payphone operation is the cost of coin collection and processing. These costs include the coins' physical removal, transportation, counting and deposit. Other related costs include operator-placed calls to the payphone to ask the caller for additional payment, programming and call interruption processes to allow the insertion of more coins, and other operational costs. Payphone owners also have marketing costs which are not applicable to calls not requiring the consumer to insert coins. None of these costs apply in the coinless usage of a payphone and should be eliminated from the Commission's calculations. Indeed, there are also certain benefits that a payphone owner derives from coinless calls. Because the owner of the 800/888 number provides the motivation for persons to use a payphone to place a call, the caller becomes familiar with the locations of payphones and may possibly place additional calls using coins. This benefits the payphone owners' marketing efforts at no cost to the phone's owner.

4. Allocation of the Cost of Call Origination Should Be Reconsidered: Determining what type of telecommunication device (i.e., payphone, cellular phone, standard telephone) to use in calling an 800/888 number is in the control of the consumer, not the owner of the phone number. The automatic billing of the access cost to the 800/888 owner where it is the consumer that is using the service is an inappropriate economic model. Frequently, a market decision is determined by the cost associated with the particular decision. For example, a consumer will decide whether to make a particular purchase by comparing costs of competing goods or services. In the case of coinless payphone calls, by shifting the cost from the consumer to the 800/888 number owner, the Commission removes this basic economic factor from the consumer's decision-making process. This eliminates a customary market force and removes a key incentive for payphone owners to compete and control their own costs. Although the Commission might conclude that the inter-exchange carriers and 800/888 subscribers should have enough market power to control these costs, the default fee removes a market factor from where it should appropriately be placed: the payphone owners. This is flawed.

Further, this approach lends itself to substantial abuse by the very parties it intends to benefit. It is possible, through automatic billing by the use of speed dialing of 800/888 numbers, for payphone owners to accrue the surcharge on an illegal and high volume basis. This is further evidence of the inappropriateness of the Commission's approach and a factor we must assume the Commission did not consider in establishing the default rate. Although there are possible solutions to this potential risk, this typifies what can result from dictating an inflexible change in the base economics and practices of toll-free access.

5. Artificial Impacts on Market: The Commission's choice of coin compensation as a determining factor in a coinless compensation environment is also inappropriate because of the lack of a competitive marker for such services. Although in some locations there may be competition for payphone services, economic factors associated with the highest volume locations, such as transportation centers and other public venues, lend to the payphone service in such a venue being monopolized by a certain payphone owner in order to maximize revenue; competing payphones rarely exist side-by-side at a train station. The presence of a location monopoly directly and inappropriately affects the compensation rate defined by the market, because it cannot reflect solely the cost of providing those services. The obvious lack of finer increments in cost than 5 cents (the smallest denomination accepted by a payphone) also inflates the compensation for coin calls and could have artificially impacted the Commission's decision.

6. Other Methods to Compensate Payphone Owners: The goal of the Commission's policy, to ensure adequate compensation of payphone owners for use of their devices, is understandable. However, the Commission default rate for coinless calls ignores other methods to achieve this goal, such as increasing the cost of coin calls to cover access to toll-free services as well. What should be evident is that the consumer base that uses a particular payphone will be mostly "static", that is, a high percentage of calls placed at a given payphone are likely placed by a group of similarly situated consumers. As an example, mostly regular store customers and individuals in the immediate neighborhood will use the payphone located at a local convenience store. Primarily travelers use Payphones in travel venues (i.e. airports, bus stations, etc.). The increasing of coin rates to include payment for the convenience of toll-free access at no cost from the payphone would tie cost of use to the users involved. The calculation of costs associated with either a specific payphone or a region of payphones would allow for flexibility in setting coin rates and would make compensation timely and appropriate. It would also have the advantage of keeping the cost of 800/888 calls in a competitive, deregulated environment which seems most appropriate given the recent evolution of the industry.

SUMMARY AND CONCLUSION

The impact of the Commission's decision to set a payphone compensation rate for coinless calls may significantly harm state EBT programs throughout the nation. EBT programs provide debit card services to benefit Recipients of various needs-tested programs. Many of the Recipients do not have telephones in their homes and rely greatly on payphones for benefit-related information and services. Many people also rely on payphones in order to contact governments and agencies via toll-free telephone numbers for vital social services.

Citicorp does not believe that it was the objective of the Commission, or the purpose or intent of the Telecommunications Act, to introduce new costs into these areas. Therefore, on behalf of EBT contractors and our governmental clients, we ask the Commission to reconsider the application of this surcharge to EBT programs and other public and private sources of human services information. This unintended consequence notwithstanding, we believe that the Commission must consider all of the factors disclosed in this letter to arrive at an equitable and justifiable fee.

CITICORP SERVICES INC.

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Dated: July 13, 1998